

**Agreement
for the
Distribution, Settlement, Billing and Collection of
Unbundled Network Element Platform (“UNE-P”)
Alternately Billed Services Messages
Between
The MCI Competitive Local Exchange Carriers,
and
The SBC Incumbent Local Exchange Carriers**

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Principal Agreement

Alternately Billed Services Agreement

This Agreement for the Distribution, Settlement, Billing and Collection of Unbundled Network Element Platform ("UNE-P") Alternate Billed Services Messages ("Agreement") between Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin, (collectively "SBC") and Brooks Fiber Communications of Arkansas, Inc., Brooks Fiber Communications of Bakersfield, Inc., Brooks Fiber Communications of Connecticut, Inc., Brooks Fiber Communications of Fresno, Inc., Brooks Fiber Communications of Michigan, Inc., Brooks Fiber Communications of Missouri, Inc., Brooks Fiber Communications of Nevada, Inc., Brooks Fiber Communications of Ohio, Inc., Brooks Fiber Communications of Oklahoma, Inc., Brooks Fiber Communications of Sacramento, Inc., Brooks Fiber Communications of San Jose, Inc., Brooks Fiber Communications of Stockton, Inc., Brooks Fiber Communications of Texas, Inc., Brooks Fiber Communications of Tulsa, Inc., Intermedia Communications, Inc.; MCImetro Access Transmission Services LLC, and MCI WORLDCOM Communications, Inc. f/k/a MFS Communications Company, Inc. or MFS Intelenet of Connecticut, Inc. or WorldCom Technologies, Inc. or MCI WorldCom Technologies, Inc., which are a Certified Local Exchange Carrier (collectively "MCI") in California, Nevada, Texas, Missouri, Oklahoma, Kansas, Arkansas, Illinois, Wisconsin, Michigan, Indiana, Ohio and Connecticut, (Herein referred to collectively as "the Parties" and each individually as a "Party"), is entered into this 1st day of January, 2004.

WHEREAS, This Alternately Billed Service ("ABS") Agreement sets forth the terms and conditions for the exchange of record detail and settlement of revenues for all ABS Messages;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the Parties hereby agree as follows:

1.0 Term

- 1.1 This Agreement shall become effective upon the full execution of this Agreement and shall remain in full force and effect until December 31, 2005 unless otherwise terminated as provided for in this Agreement.
- 1.2 Beginning no earlier than one-hundred eighty (180) days prior to the expiration of the Term, and up to the end of term, either Party may request that the Parties commence negotiations to extend or replace this Agreement with a superseding agreement by providing the other Party with a written request to enter into negotiations. The Parties may engage in good faith negotiations, not to exceed six (6) months, to enter into a successor to this Agreement.
- 1.3 The Parties may agree to renew this Agreement on the same rates and terms, for a mutually agreed period, or to renegotiate some or all of the terms. The Parties agree to operate under the then existing terms and conditions of this Agreement, as may be amended consistent with Section 22, while negotiating a successor agreement. Negotiation of a successor agreement shall not operate to extend the Agreement more than six (6) months beyond the original term.
- 1.4 Nothing in Section 1.0 shall limit either Parties termination rights as set forth in Section 2.0 below.

2.0 Termination

- 2.1 Either Party may terminate this Agreement upon thirty (30) days written notice to the other Party or earlier as may be required by a regulatory body, if any regulatory, judicial or legislative action does not allow for continuation of the settlement process as contemplated herein.
- 2.2 Notwithstanding any other provision of this Agreement, in the event of breach of any material provision of this Agreement by either Party, including but not limited to the non-payment of undisputed amounts due, and the breaching Party fails to cure such breach within thirty (30) days of receiving notice of the breach, the non-breaching Party may, at its sole discretion, terminate this Agreement and be entitled to pursue all available legal and equitable remedies for such breach.
- 2.3 Either Party may, upon one-hundred eighty (180) days written notice to the other Party, terminate this Agreement for any reason after the initial six (6) months of the term.

3.0 Definitions

- 3.1 Except as expressly provided otherwise, the definitions set forth in Section 3 shall govern all parts of this Agreement.
- 3.2 **Alternate Billed Services (ABS)** means a service that allows end-users to bill CATS and Non-CATS Messages to accounts that may not be associated with the originating line of the originating LEC.
- 3.3 **ABS Messages** means the three types of ABS calls: Calling Card Messages, Collect Messages and Third Number Billed Messages.
- 3.4 **Appropriately Validated** means the Transporting LEC shall query and wait for an affirmative response from a line information database ("LIDB") on all collect, third number billed and calling card calls before completing the call.
- 3.5 **Billing Party** means the Party that receives rated ABS Messages for billing to and collection from its Subscribers.
- 3.6 **Calling Card Messages** means intraLATA, local and/or local toll messages where the charges are billed to a telecommunications line number based calling card issued by SBC or a LEC for whom SBC is the Clearinghouse or CMDS Host, the Billing Party is MCI, and the originating number and the line number on the calling card are located in the same Telcordia Client Company territory.
- 3.7 **CATS Messages** means intraLATA, local and/or local toll Third Number or Calling Card Messages transported by another provider of local exchange service but which are billed to a billing number belonging to a Party's Subscriber and the billing number is in a different Telcordia Client Company territory from the originating and terminating telephone numbers.
- 3.8 **Centralized Message Data System I ("CMDS")** means the industry-wide data collection system located in Kansas City, Missouri, which handles the daily exchange of toll message details between participating telephone companies.

- 3.9 **Clearinghouse** means a provider of ABS Messages for billing services as defined under this Agreement, acting as an aggregator of ABS billing for other LECs, CLECs, affiliates or third party ABS message transport Clients.
- 3.10 **Client** means an authorized LEC, CLEC, affiliate or third party ABS message transport customer of a Party to this Agreement for whom that Party acts as a Clearinghouse or CMDS Host for the purpose of billing ABS Messages.
- 3.11 **CMDS Host** means the Telcordia Client Company that acts on behalf of a LEC to distribute and settle subscriber message detail through CMDS to other participating LECs.
- 3.12 **Collect Messages** means intraLATA, local and/or local toll messages where the charges are billed to the called end user who is either a MCI Subscriber, or a SBC Subscriber and where the Transporting LEC is SBC, MCI or any other LEC for whom a Party is the Clearinghouse or CMDS Host.
- 3.13 **Competitive Local Exchange Carrier ("CLEC")** means a carrier authorized to provide local, exchange access and intraLATA toll services.
- 3.14 **Daily Usage Extract** means a process whereby the Parties can receive CATS and Non-CATS Messages via the DUF in the industry standard format and as agreed to by the Parties, currently Exchange Message Interface (EMI).
- 3.15 **DUF** means the Daily Usage File.
- 3.16 **Foreign State Taxes** means state and/or local taxes levied by a taxing authority on a message where the message originates in one state, but is billed to an MCI Subscriber or SBC Subscriber with a service address in another state.
- 3.17 **Local Access and Transport Area ("LATA")** are those designated areas approved by the United States District Court for the District of Columbia in *United States of America v. American Telephone and Telegraph Company, et al.*, Civil Action Nos. 74-1698 and 82-0192.
- 3.18 **Local Exchange Carrier ("LEC")** means a carrier authorized to provide local exchange access and intraLATA toll services.
- 3.19 **Local Pay-Per-Call Service** means a program offered by SBC to the general public using the 900/976 Service Access Code (SAC) or any NXX SAC designated or reserved by SBC to transport Pay-Per-Call messages. This service includes but is not limited to the dialing pattern of 900-NXX-XXXX or NPA-976-XXX. It is any service: (1) in which any person provides or purports to provide (i) audio information or audio entertainment produced or packaged by such person; (ii) access to simultaneous voice conversation services; or (iii) any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call; or (2) for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to the charge for transmission of the call.
- 3.20 **Local Prison Pay Phone** means a program offered by either Party or Client of a Party, where either Party or Client of a Party is the transport provider, which will allow the Billing Party Subscribers to receive ABS Collect Messages that originate from any federal, state, county or local correctional facilities, not to include any pre-paid services.
- 3.21 **MCI Subscriber** means an end user who has authorized MCI to provide the end user with local exchange service and SBC provides the local exchange service to MCI through

SBC's Unbundled Local Switching, either alone or in combination with the UNE Platform ("UNE-P").

- 3.22 **Non-CATS Messages** means intraLATA, local and/or local toll Collect, Third Number or Calling Card Messages transported by SBC, MCI or another provider of local exchange service for whom a Party is the Clearinghouse or CMDS Host but which are billed to a billing number belonging to a Party's Subscriber and the billing number is in SBC territory.
- 3.23 **Non-Billing Party** means the Party that provides rated ABS Messages to the Billing Party for billing to and collection from its Subscribers.
- 3.24 **Outcollect Messages** means ABS Messages that are recorded by SBC, use MCI network elements and are billable to SBC Subscribers.
- 3.25 **Purchase of Accounts Receivable (PAR)** means the settlement summarizing the Amount Due the Non-Billing Party for the purchase of accounts receivable.
- 3.26 **Rejected Messages** are defined in Section 10.2.2 below.
- 3.27 **SBC Pre-paid Service** means a program offered by SBC's Public Communications unit that allows Subscribers to receive collect calls that originate from inmate facilities served by SBC's Public Communications affiliate when SBC Selective Blocking has been imposed.
- 3.28 **SBC Selective Blocking** means a blocking functionality which selectively blocks calls that originate from certain inmate facilities that are served by SBC's Public Communications unit. Traffic originating from these inmate facilities will not complete to UNE-P Subscribers, unless such Subscribers have set up a SBC Pre-Paid Service account managed solely by SBC, as further described herein. Where facilities and equipment permit, SBC will identify MCI's OCNs and provide programming necessary to restrict inmate originated collect calls, which terminate to SBC unbundled local switch ports.
- 3.29 **SBC Subscriber** means an end user who has authorized SBC or a Client LEC for whom SBC is the Clearinghouse or CMDS Host to provide the end user with local exchange service or who has billed an intraLATA call to a telecommunications calling card issued by SBC or by a LEC for whom SBC is the Clearinghouse or CMDS Host.
- 3.30 **Subscriber** means either the SBC Subscriber, MCI Subscriber or both as those terms are defined herein. The term "Subscriber" does not include any of the Parties to the Agreement with respect to any item or service obtained under this Agreement.
- 3.31 **Telcordia Client Company** means SBC and any Bell Operating Company as defined in Section 153 of the Communications Act of 1934, as amended.
- 3.32 **Third Number Billed Messages** means intraLATA, local and/or local toll messages where the charges are billed to a MCI, SBC or any other LEC for whom a Party is the Clearinghouse or CMDS Host Subscriber's telephone number that is not the originating or terminating telephone number, the Transporting LEC is SBC, MCI or any other LEC for whom a Party is the Clearinghouse or CMDS Host, and the originating and billed telephone numbers are located in the same Telcordia Client Company territory.
- 3.33 **Transporting LEC** means the LEC providing the local exchange service on the line on which the call originates.
- 3.34 **Unauthorized Messages** are defined in Section 4.3 below.

- 3.35 **Unbillable Messages** are defined in Section 10.2.3 below.
- 3.36 **Uncollectible ABS Messages** means billable ABS Messages invoiced to a Billing Party's Subscriber that are either adjusted off a Subscriber's account, for whatever reason, by the Billing Party or are unpaid and remain unpaid by the Billing Party's Subscriber, despite the Billing Party's collection efforts.

4.0 Scope of Agreement

- 4.1 This Agreement specifies the rights and obligations of the Parties with respect to the distribution, billing, collection and settlement of ABS Messages billed to a Party's Subscriber.
- 4.2 The Parties agree that only ABS Messages that consist of the following message types are authorized and will be processed under the terms of this Agreement:
- 4.2.1 Appropriately Validated operator assisted or automated operator platform services ABS Messages for (1) Collect calls; (2) Third Number billed calls or (3) Calling Card calls.
- 4.2.2 When ordered by MCI and agreed to in the Interconnection Agreement between the Parties for a given state, other ABS call types may be included. Those ABS Messages are 1) operator busy/verify; 2) operator interrupt; 3) directory assistance 4) directory assistance call completion calls. These call types become ABS when they are placed utilizing collect, calling card, or a billed to third party.
- 4.3 Any other message types or charges not specified in Section 4.2 are not authorized without the written approval of the respective Billing Party and will not be processed under the terms of this Agreement ("Unauthorized Messages"). In addition, messages specified in Section 4.2 that contain or appear as the following are also considered Unauthorized Messages. These message types or charges include, but are not limited to:
- 4.3.1 Direct dialed intraLATA or interLATA long distance toll messages including international toll calls;
- 4.3.2 Operator assisted or automated operator platform services transported by or transported for an Interexchange Carrier or Interexchange Carrier affiliate or Interexchange Carrier Client of a Party to this Agreement including (1) collect; (2) third number billed or (3) calling card intraLATA toll calls.
- 4.3.3 Charges for pre-paid calling cards, calling cards, debit card, pre-paid services or any fee associated with pre-paid calling cards, calling cards, debit cards or pre-paid services. This does not include traditional toll usage charges associated with calling card messages authorized under Section 4.2.1;
- 4.3.4 Local Pay-Per-Call Service, 900 access, 976 access or any NXX designated or reserved by SBC to transport pay-per-call messages, unless the Parties have executed a separate addendum attached hereto for Local Pay-Per-Call Service;
- 4.3.5 Charges resulting from information and/or marketing practices that could cause harm to the billing Party's reputation, including, but not limited to; descriptions of sexual acts; child pornography; vulgar language; discrimination based on race, gender, ethnic origin, religion, disability, sexual orientation, or veteran

status; references to or dealing in any illegal acts or the facilitation thereof; misleading, confusing, or offensive marketing; marketing that exploits minors, developmentally or mentally incompetent people and/or negative pre-subscription.

- 4.3.6 Messages which have been previously billed to the MCI or SBC Subscriber;
- 4.3.7 Messages for SBC Pre-Paid Services
- 4.3.8 Charges for services which result in excessive Subscriber complaints;
- 4.3.9 Charges for 800 services to an originating Subscriber;
- 4.3.10 Charges for cellular services and/or charges to phone numbers assigned to cellular services;
- 4.3.11 Charges which consist of combined individual call records and/or other charges to produce bulk billed services.
- 4.3.12 Zero-rated ABS Messages for bill presentation.

4.4 The Parties agree that each Party is obligated to forward only true, correct and owing charges to the other Party for billing and collection, and agree that neither Party will knowingly send or bill Unauthorized Messages as ABS Messages. The Parties agree that any Unauthorized Messages that are submitted as ABS Messages shall be recouped back to the Non-Billing Party. In addition, if the Non-Billing Party has engaged in a pattern or practice of submitting Unauthorized Messages as ABS Messages, or if an excessive amount of Subscriber complaints are lodged with the Billing Party, the FCC, any state PUC, commission, or regulatory agency; or any suit filed related to Non-Billing Party's alleged tender of Unauthorized Messages as ABS Messages to the Billing Party then the Billing Party may return all unbilled ABS Messages received within the prior thirty (30) days and in the sole discretion of the Billing Party may terminate this Agreement, in whole or at a state level, upon five (5) days written notice, without further liability. The Parties further agree the Billing Party does not financially benefit from billing the Non-Billing Party's Unauthorized Messages as ABS Messages and, instead, incurs additional, significant expense and loss of Subscriber good will.

4.5 This Agreement includes the following Exhibit that is incorporated herein by this reference:
Exhibit A - Rate Schedule

5.0 Blocking

- 5.1 Both Parties shall comply with all federal and state requirements to block Subscriber access to ABS calls upon Subscriber's request. Each Party may also block Subscriber access to ABS calls due to non-payment or fraudulent calling patterns.
- 5.2 Each Party shall cooperate with the other Party to investigate, minimize, and take corrective action in cases of potential fraud. Each Party shall also block its Subscriber access to ABS calls upon the other Party's request in the case of potential fraud. Notwithstanding the foregoing, the Billing Party shall not be liable to the Non-Billing Party for any fraud associated with ABS calls originating from the Non-Billing Party's or third party Client's network. Revenue associated with validated Subscriber fraud will be reflected as an adjustment on the Purchase of Accounts Receivable Report and adjusted on the appropriate summary bill, provided that, when a request for blocking is required to

perform a block, the request is submitted timely and in all cases blocking has been established on a timely basis.

- 5.3 SBC may Selectively Block calls, which originate from certain inmate facilities that are served by SBC or its affiliate that are billable to MCI's Subscribers, SBC will identify MCI's Operating Company Numbers and provide the programming necessary to restrict inmate originated collect calls, which terminate to MCI Subscribers, where facilities and equipment permit.
- 5.4 MCI will not be charged for SBC Selective Blocking for the term of this agreement.

6.0 Description of Services

- 6.1 The Non-Billing Party shall forward all rated ABS Messages to the Billing Party, regardless of whether the rated ABS Message originated from the Non-Billing Party's network, or from a third party Client's network (through CMDs Host or Clearinghouse arrangements). The Parties agree to forward the rated ABS Messages via the Daily Usage File (DUF). All ABS Message detail on the DUF shall be in Exchange Message Interface (EMI) industry standard format, including an identifier of the originating service provider in compliance with the Ordering and Billing Forum (OBF) guidelines.
 - 6.1.1 For Local Prison Pay Phone messages, where technically available, the Non-Billing Party will also submit an identifier on the DUF that identifies the messages as originating from an inmate facility, provided the identifier remains in Exchange Message Interface (EMI) industry standard format and is in compliance with the Ordering and Billing Forum (OBF) guidelines.
- 6.2 SBC shall timely forward unrated Outcollect Messages to MCI via the DUF. MCI may rate the Outcollect Messages and forward to SBC via the return DUF process for billing to SBC Subscribers or Subscribers of another provider of local exchange service for whom SBC is the Clearinghouse. All message detail shall be in EMI industry standard format, and shall be exchanged at agreed upon intervals.
- 6.3 The Parties shall recourse any Rejected Messages or Unbillables Messages via the DUF or return DUF, using the appropriate EMI Guidelines.
 - 6.3.1 Either Party shall adjust the other Party's ABS charges for timely and properly returned Unbillables and Rejects within thirty (30) days or the next settlement after receipt of such Unbillables and Rejects.
 - 6.3.2 Either Party may return Unbillables and/or Rejects to the other Party no later than sixty (60) days from the date the message was originally sent to it through the DUF.
 - 6.3.3 Upon receipt of returned Rejects either Party may attempt to correct the message and re-send it to the other Party for Subscriber billing.
- 6.4 The Parties shall provide revenue settlement for each other's ABS Messages provided to each other for billing to their respective Subscribers; provided, however, that revenue settlement for Non-CATS Messages shall only be provided for those Client LECs that have executed an agreement with a Party to this Agreement covering the settlement of Non-CATS Messages.
- 6.5 This Agreement does not cover the distribution, settlement or billing of Local Pay-Per-Call Service messages transported by either Party that originate from and/or is billable to

the other Party's Subscriber's telephone number unless the Parties have executed a separate addendum attached hereto for Local Pay-Per-Call Service.

7.0 Clearinghouse Provisions

- 7.1 Either Party may act as a Clearinghouse or aggregator of billing for other LECs, CLECs, affiliates or third party ABS message transport customers (hereinafter "Client" or "Clients"). If either Party acts as an agent or aggregator for any permitted Clients, the following requirements apply:
 - 7.1.1 The Clearinghouse Party shall be responsible for ensuring that any Client Messages forwarded to the other Party for billing fully conform to the terms and conditions of this Agreement. Client Messages shall be considered as the Clearinghouse Party's billing for all purposes under this Agreement.
 - 7.1.2 The Clearinghouse Party shall remain solely responsible to its Clients for all rights and obligations under this Agreement. The Billing Party shall have no obligation to deal directly with a Client, nor shall Client be a third party beneficiary of this Agreement nor have any claim directly against the Billing Party hereunder. The Clearinghouse Party shall serve as the sole point of contact with its Clients.

8.0 Billing of ABS Messages by the Parties

- 8.1 The Parties will use good faith efforts to produce and mail a monthly bill for each Party's Subscriber with ABS Messages. ABS Messages will be included within the same invoice and billing envelope where the Party's Subscribers are billed for other charges, including but not limited to monthly service fees and local toll charges. The Party's Subscriber invoice will show a single balance due.
- 8.2 ABS Messages will be segregated within the invoice for service providers other than MCI when billed to the MCI Subscriber. The respective section header or page header will indicate the service is billed on behalf of another provider.
- 8.3 ABS Messages will be included with other like charges within the SBC retail Subscriber statement when billed to the SBC Subscriber.
- 8.4 Any messages that contain data errors within the traffic records, do not pass edits established by either Billing Party, or cannot be identified to a valid Subscriber account, will be recoured to the originator (SBC or MCI) as Rejected or Unbillable Messages, via the appropriate return mechanism.
- 8.5 Both Parties will provide inquiry services for their own Subscribers who may have questions about their charges. Both Parties will generally utilize their standard crediting and adjustment guidelines, as may be in effect from time to time, when handling Subscriber inquiries about ABS Messages. Notwithstanding the above, either Party, at its sole discretion, may determine at anytime, to adjust ABS Messages. The Parties will work cooperatively to address the Subscriber's concerns.
- 8.6 Both Parties shall perform treatment and collection functions for their own Subscribers. The Parties acknowledge that each Party exercises judgment in determining when or whether to deny local service and is not required to deny service at the earliest possible opportunity. Treatment and collection functions may be limited by law and regulatory requirements. Where law or regulation has determined that ABS Messages are non-

deniable, the Parties will not disconnect, terminate or suspend Subscriber accounts for non-payment of ABS Messages. Instead, ABS Messages may be removed from the Subscriber's bill as uncollectible.

- 8.7 Both Parties will generally utilize their standard treatment and collection procedures, which may include blocking as appropriate, as may be in effect from time to time, in collecting the balance due. Notwithstanding the above, the Parties at their sole discretion may determine at anytime, to adjust ABS Messages rather than deny local service.
- 8.8 The Parties acknowledge that Federal or State laws may preclude denial of local access service for Subscriber's failure to pay for ABS Messages. The Parties acknowledge that Subscriber payments apply first to deniable charges, which if not paid, may result in the loss of local access service.

9.0 Purchase of Accounts Receivable

The Parties shall purchase accounts receivable from each other that arise from ABS Messages that are included in bills rendered by the Parties to their respective Subscribers as follows: The Parties shall receive from each other a forty percent (40%) purchase of accounts receivable discount (the "Discount for Purchase of Accounts Receivable ") off the total amount of charges for Accepted ABS Messages (which requires that each Party pay (a) sixty percent (60%) of the total amount of charges for accepted ABS Messages to be billed to their respective Subscribers. Except as otherwise provided in this Agreement, once ABS Messages are purchased as an accounts receivable, the Billing Party shall not adjust, deduct, debit or otherwise attempt to recourse back to the Non-Billing Party any Uncollectible ABS Messages, including but not limited to where the Subscriber disputes the ABS Message accuracy, declares financial insolvency, or otherwise refuses to pay the Subscriber invoice issued by the Billing Party.

10.0 Settlement Arrangement

- 10.1 The Parties shall provide settlement for ABS Messages billed to their respective Subscribers forwarded to each other as set forth in Section 6.1. The Non-Billing Party shall invoice all ABS Messages to the Billing Party on a monthly basis and provide a Purchase of Accounts Receivable Report for settlement purposes. Settlement of Amount Due will be based on amounts calculated as described below and presented on the Purchase of Accounts Receivable Report. At the execution of this Agreement SBC provides separate invoicing of ABS messages in SBC West (California and Nevada), SBC Southwest (Arkansas, Kansas, Missouri, Oklahoma and Texas), SBC Midwest (Illinois, Indiana, Michigan, Ohio and Wisconsin) and SBC Connecticut provide mixed bills with separately identified charges.

10.1.1 Settlement Calculation for Amount Due

- a. Gross ABS Billings Sent to Billing Party (+)
- b. Rejects (-)
- c. Unbillables (-)
- d. Accepted ABS Messages for Billing (a-b-c= d)
- e. Discount for Purchase of Accounts Receivable (-)
- f. Miscellaneous Adjustments (Duplicates/Fraud) (-)
- g. Net Purchase of Accounts Receivable (d-e-f= g)
- h. Late Payment Charge (+)
- i. Billing and Collection Fee (-)
- j Amount Due Non-Billing Party (g + h - i = j)

10.1.2 Sample

- a. \$200,000.00 sent (for 50,000 calls)
- b. Minus \$1,000.00 Rejects
- c. Minus \$10,000.00 Unbillables
- d. Equals \$189,000.00 Accepted ABS Messages
- e. Minus \$75,600.00 for Discount for Purchase of Accounts Receivable
- f. Minus \$1,500.00 Miscellaneous Adjustments
- g. Equals \$111,900 Net Purchase of Accounts Receivable
- h. Plus \$0.00 Late Payment Charge
- i. Minus \$2,500.00 for B&C
- j. Amount Due \$109,400.00

10.1.3 At the execution of this Agreement, SBC BANs issued for the ABS accounts in all SBC states will reflect the Discount for Purchase of Accounts Receivable, one (1) month in arrears. When and where commercially reasonable, SBC may discontinue applying the credit in arrears, and may instead reflect the Discount for Purchase of Account Receivable incurred during that same month.

10.2 As used in Section 10.1 above, the following terms are defined as set forth below:

10.2.1 Gross ABS Billings Sent means the total rated charges for ABS Messages sent to the Billing Party, based on the Non-Billing Party's schedule of rates including applicable Foreign State Taxes. Settlement of Non-CATS Messages is contingent on the conditions set forth in Section 6.1 above being satisfied.

10.2.2 Rejected Messages means the rated value of ABS Messages that failed to pass the established edits, including, but not limited to: (1) messages which when initially received by the Billing Party are more than ninety (90) days from the date of origination of the call (or as such shorter or longer time as may be required by an appropriate regulatory authority); (2) messages which are missing information; (3) messages which contain incomplete or incorrect information, or (4) Automatic Number Identification "ANIs" that do not belong to the Billing Party at the time the calls were made. Rejects are considered "Unbillable" as set out herein and are recoured to the Non-Billing Party.

10.2.3 Unbillable Messages means the rated value of ABS Messages that were not billable to a valid Billing Party Subscriber account, not the result of an error by the Billing Party, that are recoured to the Non-Billing Party.

10.2.4 Accepted ABS Messages for Billing is the summation of Gross Billings Sent minus any Rejected Messages and Unbillable Messages.

10.2.5 Discount for Purchase of Accounts Receivable means the percent of discount to the Accepted ABS Messages for Billing.

10.2.6 Miscellaneous Adjustments means the rated value of ABS Messages or portion thereof that is adjusted, as a result of or discovery of duplicate billing, fraud or a dispute or claim by the Billing Party.

10.2.7 Net Purchase of Accounts Receivable means the summation of Accepted ABS Messages per billing minus the Discount for Purchase of Accounts Receivable, minus Miscellaneous Adjustments.

10.2.8 Late Payment Charge means any interest charges that may be due as a result of a late payment by the Billing Party as set forth in Section 11.3.

10.2.9 Billing & Collection Fee means the per message rates, as set forth in Exhibit A, times the number of applicable ABS Messages resulting from the Gross ABS Billings Sent to the Billing Party.

10.2.10 Amount Due means the summation of Net Purchase of Accounts Receivable plus Late Payment Charge and minus the Billing & Collection Fee.

11.0 Settlement Due Date

11.1 If the Amount Due the Non-Billing Party, as set forth in the PAR Report is a positive number, the Billing Party shall pay the Amount Due the Non-Billing Party thirty (30) days from the date of the Invoice or PAR Report whichever is earlier ("Due Date"); provided however, that the Billing Party receives such PAR Report at its designated location at least twenty (20) days prior to the payment Due Date. In the event the Billing Party does not receive the PAR Report at least twenty (20) days prior to PAR Report payment Due Date, the Billing Party will pay the Non-Billing Party the Amount Due within twenty (20) days from the date of receipt of the PAR Report. If the Amount Due the Non-Billing Party is a negative number, upon request of the Billing Party, the Non-Billing Party shall pay the Billing Party the Amount Due the Billing Party within thirty (30) days of the receipt of the PAR Report. Payment will be made by electronic funds transfer through Automated Clearinghouse (ACH) unless otherwise agreed to by the Parties.

11.2 If the Due Date falls on a Saturday, Sunday or bank holiday, the due date shall be the first non-holiday day following such Saturday, Sunday or bank holiday.

11.3. Any payment received after the Due Date shall be subject to a Late Payment Charge. The Late Payment Charge shall be the portion of the Amount Due the Non-Billing Party or the Amount Due the Billing Party, whichever is applicable, that is received after the Due Date, multiplied by a late factor. The late factor shall be a 0.033% daily charge, not compounded, (12% annual percentage rate). Any Late Payment Charge shall be included in the next applicable payment.

11.3.1 If either Party fails to pay when due any settlement or any interest or other amounts due to the other Party under this Agreement, then in addition to any other rights the Billing Party may have under this Agreement, the Billing Party may refuse to provide any further billing and collection services, directly or indirectly, to the other Party, including billing and collection services on the Non-Billing Party ABS Messages received through an aggregator, affiliate or other agent of the Non-Billing Party. If the Billing Party does accept any Non-Billing Party ABS Messages for billing while the Non-Billing Party is past due on any amounts owing to the Billing Party, then the Billing Party may deduct the amounts owed from any PAR owed to the Non-Billing Party or its agent on the Non-Billing Party's behalf.

11.3.2 Notwithstanding anything contained herein to the contrary, if the Billing Party fails to pay its obligations to the Non-Billing Party as they become due or when services are terminated, the Parties agree the Non-Billing Party shall be entitled to withhold any funds, which otherwise might be due, or become due to the Billing Party hereunder, to satisfy any unpaid or potential obligation of the Billing Party to the Non-Billing Party.

11.4 Should either Party dispute any portion of the Amount Due, the Party shall notify the other Party in writing of the nature and basis of the dispute as soon as possible and prior

to the Due Date. The Parties shall use their best efforts to resolve the dispute prior to the Due Date.

12.0 Data Retention

12.1 The Non-Billing Party shall be responsible for retaining backup copies of ABS Messages that have been rated and sent to the Billing Party as described in Section 6.1, for a minimum retention period of ninety (90) days or longer time as required by appropriate regulatory authority with jurisdiction ("Retention Period"), from the date the data was originally sent to the Billing Party ("Transmission Date").

12.1.1 If ABS Message data provided by the Non-Billing Party is determined to be lost, damaged, destroyed or otherwise unreadable within the Retention Period after the Transmission Date, then:

12.1.1.1 The Billing Party will attempt, if possible to recover the EMI record detail and process the ABS Messages.

12.1.1.2 In the event data cannot be recovered by the Billing Party, the Billing Party will request a back-up tape or transmission from the Non-Billing Party.

12.1.2 If for any reason the Billing Party chooses not to bill and collect traffic that can be recovered through backup provided by the Non-Billing Party within the Retention Period of the Transmission Date; or if it is determined that data was lost, damaged, destroyed or unreadable due to the Billing Party's errors or omissions and it has been more than the Retention Period since the Transmission Date, then:

12.1.2.1 The Billing Party shall pay the Non-Billing Party for the rated ABS Messages less an estimated amount for Rejected Messages, Unbillable Messages, Discount for Purchase of Accounts Receivable and Billing and Collection Fees. If the actual rated value of the ABS Messages is unknown or cannot be determined, an estimated value will be determined by utilizing the average transmission amount from the most recent three (3) months.

12.2 SBC shall be responsible for retaining backup copies of Outcollect Message detail that is to be sent to MCI, as set forth in Section 6.2, for a minimum retention period of twelve (12) months from the original traffic date.

12.2.1 If it is determined within ninety (90) days of the original traffic date that Outcollect Message data was never sent to MCI, was lost, damaged or destroyed, or was otherwise unreadable by MCI, then:

12.2.1.1 SBC will attempt to recover (where applicable) the Outcollect Message detail and forward to MCI via the procedures outlined in Section 6.2.

12.2.1.2 In the event Outcollect Message detail cannot be recovered by SBC and forwarded to MCI, then SBC shall pay MCI for the estimated rated value of the Outcollect Messages less an estimated amount for Rejected Messages, Unbillable Messages, Discount for Purchase of Accounts Receivable and Billing and Collection Fees. The estimated value of the unrecoverable Outcollect Messages will be determined by utilizing the average transmission amount for rated ABS Messages sent by MCI through the reverse DUF from the most recent three (3) months.

12.2.2 If it is determined more than ninety (90) days after the original traffic date, that Outcollect Messages were never forwarded to MCI; or were lost, damaged or destroyed due to SBC's error or omission; or otherwise unreadable by MCI due to SBC's error or omission, then:

12.2.2.1 SBC shall pay MCI for the estimated rated value of Outcollect Messages less an estimated amount for Rejected Messages, Unbillable Messages, Discount for Purchase of Accounts Receivable and Billing and Collection Fees. The estimated value of the Outcollect Messages will be determined by utilizing the average transmission amount for rated ABS Messages sent by MCI through the reverse DUF from the most recent three (3) months.

13.0 Settlement with Clearinghouse Clients or CMDs Hosted LECs

Any Non-Billing Party who acts as an agent or aggregator of an authorized Client will be responsible for remitting payment to that Client for amounts collected by the Billing Party where those amounts are attributable to ABS Messages transmitted by the Client. The Billing Party shall have no liability to a Client of a Non-Billing Party.

14.0 Taxes

14.1 The Parties shall, in conjunction with the services provided under this Agreement for ABS Messages perform the following functions:

14.1.1 The Billing Party shall determine and calculate, bill to and collect from Subscribers, and remit to the appropriate authorities, all applicable federal, state, or local sales, use, excise, or other taxes, tax like charges, and surcharges imposed on or with respect to the ABS charges. Hereinafter the above referenced taxes, tax-like charges, and surcharges are collectively referred to as "Tax(es)".

14.1.2 The Non-Billing Party shall not add on any Taxes to the ABS charges it sends to the Billing Party on either the Daily Usage File or the monthly invoice. Notwithstanding the foregoing, the Non-Billing Party shall be responsible for calculating and providing to the Billing Party or passing through from a Client for billing by the Billing Party applicable Foreign State Tax, if any, associated with ABS Messages.

14.1.3 The Billing Party shall be responsible for determining the tax exempt status of a Subscriber. It is recognized that the Billing Party is merely acting as the Non-Billing Party's agent with respect to billing and collecting Taxes hereunder.

14.1.4 The Billing Party shall file all applicable returns due for Taxes with the appropriate Taxing authority and pay or remit the applicable Taxes due to the appropriate Taxing authority.

14.1.5 Any communication from a Subscriber relating to Taxes shall be the responsibility of the Billing Party. All determinations as to the removal, addition, or adjustment of Taxes to be billed to a Subscriber also shall be the responsibility of the Billing Party.

14.1.6 Any communication with a Taxing authority regarding Taxes applicable to ABS charges shall be the responsibility of the Billing Party.

- 14.1.7 The Billing Party will indemnify and hold the Non-Billing Party harmless from and against any liability resulting from any Tax, penalty, or interest relating to or arising out of the Billing Party's failure to properly bill, collect, or remit any Tax or file any return as required by law.
- 14.1.8 The Billing Party shall, at its option and expense (including, if required by a taxing authority, paying any Tax, penalty and interest prior to final resolution of the issue), have the right to seek administrative relief, a ruling, judicial review (original or appellate level) or other appropriate review (in a manner deemed appropriate by the Billing Party), as to the applicability of any Tax, penalty, or interest, or to protest any assessment and direct any legal challenge to such assessment, but shall be liable hereunder for any amount of Tax ultimately determined to be due.
- 14.1.9 Notwithstanding Section 14.1.7 above, such indemnity is conditioned upon the Non-Billing Party providing the Billing Party sufficient notification of any proposed assessment of additional Tax, penalty, or interest to afford the Billing Party the opportunity to seek administrative relief, a ruling, judicial review (original and appellate) or other appropriate review of the applicability of any Tax prior to the assessment of additional Tax.
- 14.1.10 When requested by the Billing Party and at the Billing Party's expense, the Non-Billing Party shall cooperate or participate with the Billing Party in any proceeding, protest, or legal challenge, and if Non-Billing Party's participation is not requested by the Billing Party, the Non-Billing Party may participate (but not control), at its own expense, in any such proceeding, protest, or legal challenge.
- 14.1.11 Any consideration for the billing and collection services provided to the Non-Billing Party by the Billing Party under this Agreement is exclusive of all federal, state, and local sales, use, or other taxes, tax-like charges, and surcharges imposed on billing and collection services ("B&C taxes"). The Non-Billing Party will pay any applicable B&C taxes (except any taxes, tax-like charges, or surcharges based on the Billing Party's income, net worth, franchise, or property, which shall be borne solely by the Billing Party), provided that such B&C taxes are due by law from a purchaser of the billing and collection services and properly invoiced. If the Non-Billing Party provides the Billing Party with a duly authorized direct pay permit or exemption certificate, the Billing Party will exempt the Non-Billing Party in accordance with law, effective on the date that the Billing Party receives the certificate.

15.0 Audits and Examinations

- 15.1 As used herein "Audit" shall mean a comprehensive review of services performed under this Agreement; "Examination" shall mean an inquiry into a specific element or process of services performed under this Agreement. Upon sixty (60) days written notice by the requesting party ("Requesting Party") to the other party ("Non-Requesting Party"), the Requesting Party shall have the right to audit and examine, during normal business hours and at reasonable intervals to be mutually determined, the Non-Requesting Party's records, books and documents, as may reasonably contain information relevant to the operation of this Agreement; provided, however, neither Party may perform more than one Audit and more than one Examination of the other Party under this Agreement in any twelve (12) month period. Within the above described sixty (60) day period, the Parties shall reasonably agree upon the scope of the Audit or Examination, the documents to be

reviewed, and the time, place and manner in which the Audit or Examination shall be performed.

- 15.2 Each Party shall bear its own expenses occasioned by the Audit or Examination, provided that the expense of any special data extraction shall be borne by the Requesting Party. Within the above described sixty (60) day period, the Parties may also agree that, in lieu of an Audit or Examination by the Requesting Party, the Non-Requesting Party shall conduct an internal review and provide the Requesting Party with the results of that review; as a further alternative, the Non-Requesting Party may request that an Audit or Examination be conducted by an outside auditor. In the event of such outside Audit or Examination, the Requesting Party shall pay the fee of the outside auditor.
- 15.3 Where the Parties agree that an Audit or Examination discloses error(s), any corrective action be undertaken within thirty (30) days of written notice of such errors(s). All information received or reviewed by the Requesting Party or its authorized representative in connection with the Audit or Examination is to be considered confidential and is not to be distributed, provided or disclosed in any form to anyone not involved in the Audit or Examination or the resolution of its findings (which may include any dispute resolution proceedings, including but not limited to mediation or judicial proceedings), nor is said information to be used for any other purposes. All information received or reviewed by the Requesting Party or its authorized representative in connection with any Audit or Examination that the Requesting Party desires to distribute, provide or disclose in any dispute resolution proceeding shall be subject to protective arrangements as reasonably agreed to by the Parties. The Non-Requesting Party reserves the right to require any non-employee who is involved directly or indirectly in any Audit or Examination or the resolution of its findings as described above to execute a non-disclosure agreement satisfactory to the Non-Requesting Party.

16.0 Dispute Resolution

- 16.1 In the event of any disputes between SBC and MCI with respect to the terms and conditions of this Agreement, or any subject matter referred to in or governed by this Agreement, such disputes shall be settled as follows, except for disputes in which a Party seeks injunctive relief or must file suit in order to avoid expiration of the applicable statute of limitations:
- 16.2 No claim may be brought for any dispute arising from this Agreement more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention unless the claiming Party can prove fraud or intentional concealment by the Party against whom the claim is raised.
- 16.3 Upon receipt by one Party of notice of a dispute by the other Party pursuant to Section 17, each Party will appoint a knowledgeable, responsible non-lawyer business representative with the authority to act on behalf of the Party to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon mutual agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both Parties. Documents identified in or provided with such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit. If the informal negotiations do not resolve the

dispute within thirty (30) days of the initial written request for negotiation, a Party may request that the dispute or claim be resolved by the escalation procedures noted as follows:

- 16.4 Escalation Procedures - All disputes between the Parties not resolved by the informal dispute resolution procedure shall be escalated through normal business procedures to an Intercompany Review Board consisting of one representative from each company at the vice-presidential level (or at such lower level as each Party's vice-president may delegate). Each Party has the right to request and, upon agreement of the other Party, to review any materials it deems pertinent to the dispute. The Intercompany Review Board shall consider any material submitted to it by either Party. Not to exceed sixty (60) days from the date the dispute arises, each Party shall state in writing when it has received all materials it desires to review, and thirty (30) days thereafter the Intercompany Review Board shall state in writing to the Parties the extent to which it has resolved the dispute. Both Parties agree to negotiate resolution of such problems in good faith.
- 16.5 In the event a dispute shall arise as to the Parties' respective rights, duties and obligations under this Agreement that is not resolved under the dispute resolution procedures of this Section to the satisfaction of either Party, or in the event of a claim for breach of this Agreement by either Party, it is agreed that such disputes shall be settled by binding arbitration in accordance with the American Arbitration Association Arbitration Rules and Procedures as amended by this Agreement. The costs of arbitration, including the fees and expenses of the arbitrator, shall be shared equally by the Parties unless the arbitration award provides otherwise. Each Party shall bear the cost of preparing and presenting its case. The Parties agree that this provision and the Arbitrator's authority to grant relief shall be subject to the United States Arbitration Act, 9. U.S.C. 1-16 et seq. ("USAA"), the provisions of this Agreement, and the ABA-AAA Code of Ethics for Arbitrators in Commercial Disputes. The Parties agree that the arbitrator shall have no power or authority to make awards or issue orders of any kind except as expressly permitted by this Agreement, and in no event shall the arbitrator have the authority to make an award that provides for punitive or exemplary damages. The Arbitrator's decision shall follow the plain meaning of the relevant documents, and shall be final and binding. The award may be confirmed and enforced in any court of competent jurisdiction. All post-award proceedings shall be governed by the USAA. This provision should not be construed so as to prohibit either Party from seeking preliminary or permanent injunctive relief in any court of competent jurisdiction.

17.0 Notices

Except as otherwise provided herein, all notices or other communication hereunder shall be deemed to have been duly given when made in writing and delivered in person or deposited in the United States mail, postage prepaid, return receipt requested and addressed as follows:

MCI:

MCI
LEC Billing & Collection Manager
6312 S. Fiddler's Green Circle, Suite 600E
Greenwood Village, Colorado 80111

With a copy to:

MCI
Attn: Mass Markets Legal, C2-1
22001 Loudoun County Parkway

Ashburn, VA 20147

SBC:

Contract Administration
Attn: Notices Manager
311 S. Akard, 9th Floor
Dallas, TX 75202-5398

If personal delivery is selected to give notice, a receipt of such delivery shall be obtained. The address to which notices or communications may be given to either Party may be changed by written notice given by such Party to the other pursuant to this Section.

18.0 Disclaimer Of Representations And Warranties

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS AND SERVICES IT PROVIDES UNDER OR IS CONTEMPLATED TO PROVIDE UNDER THIS AGREEMENT AND EACH PARTY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NO BILLING PARTY TO THIS AGREEMENT ASSUMES RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY A NON-BILLING PARTY TO THIS AGREEMENT WHEN SUCH DATA OR INFORMATION IS PROVIDED BY A CLIENT.

19.0 Limitation of Liability

- 19.1 Except where otherwise provided in this Agreement, each Party's liability to the other (as distinct from a Party's obligation to pay for services settled under this Agreement) for any loss, cost, claim, injury, liability or expense arising out of any negligent act or omission in its performance of this Agreement shall be limited to the amount of direct damages actually incurred, but not to exceed the total charges assessed by SBC or MCI, whichever is applicable, during the most recent three (3) month period for the services provided under this Agreement. The above limitation of liability shall not apply to gross negligence, willful misconduct or indemnified third party claims.
- 19.2 Excepting gross negligence or willful misconduct or damages or liability arising as part of an indemnified third party claim, neither Party shall be liable to the other for any indirect, incidental, special, punitive, exemplary, reliance or consequential damages of any kind, including (without limitation) damages for lost profits, regardless of the form of action, whether in contract, indemnity, warranty, strict liability, or tort, including (without limitation) negligence of any kind.
- 19.3 The Parties agree that the Billing Party assumes no liability for any action or claim arising out of the Billing Party's determination to refuse to bill any Local Prison Pay Phone messages covered under this Agreement.

20.0 Indemnification

- 20.1 Each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party ("Indemnified Party") from and against any loss, cost, claim, liability, damage or expense, including reasonable attorneys' fees, to third parties, relating to or arising out of the acts, omissions, negligence or misconduct by the Indemnifying Party, its employees, agents or contractors in the performance of this Agreement or the failure of the

Indemnifying Party to perform its obligations under this Agreement. The above indemnification obligation shall extend to any third party actions (including any governmental or regulatory action) resulting from actions or omissions by the Indemnifying Party which constitute a violation of any applicable laws, rules or regulations. In addition, the Indemnifying Party shall, to the extent of its obligations to indemnify hereunder, defend any action or suit brought by a third party against the Indemnified Party.

- 20.2 The Indemnified Party shall notify the Indemnifying Party promptly in writing of any written claims, lawsuits or demand by third parties for which the Indemnified Party alleges that the Indemnifying Party is or may be responsible under this Paragraph and tender the defense of such claim, lawsuit or demand to the Indemnifying Party. The Indemnified Party also shall cooperate in every reasonable manner within the defense or settlement of such claim, demand or lawsuit. The Indemnifying Party will not be liable under this subparagraph for settlements by the Indemnified Party of any claim, demand or lawsuit unless the Indemnifying Party has approved the settlement in advance or unless the defense of the claim, demand or lawsuit has been tendered to the Indemnifying Party in writing and the Indemnifying Party has failed promptly to undertake the defense.
- 20.3 The Parties acknowledge that the Billing Party receiving the ABS Messages under this Agreement has no knowledge of the validity of billing charges sent by the Non-Billing Party for billing and collections under this Agreement, and that the Billing Party strictly relies upon the Non-Billing Party to forward only correct billing charges that can be, if necessary, substantiated in a court of law. The Non-Billing Party agrees, when forwarding billing charges to the Billing Party, to ensure that said charges are true and correct, and accurately reflect proper charges legally owed by the Billing Party's Subscriber. This certification of validity shall apply to all billing charges forwarded to the Billing Party under this Agreement from whatever source. Should the Billing Party incur liability for billing and collection of any billing charges forwarded by the Non-Billing Party, or for termination of Subscriber's local phone service as part of said collection, or for defamation or libel or injury to credit or otherwise incurs liability arising from or resulting from the Non-Billing Party's performance of its obligations under this Agreement, not attributable to the Billing Party's gross negligence or willful misconduct, the Non-Billing Party will defend, indemnify, and hold harmless the Billing Party for any loss, cost, claim, damage or expense (including reasonable attorney's fees) arising from such billing and collection.
- 20.4 In addition to indemnity provided for in this Section 20, the Non-Billing Party shall indemnify and hold harmless the Billing Party from and against any fines or penalties imposed on the Billing Party resulting from the Non-Billing Party's violation of any regulation or law associated with Local Prison Pay Phone messages submitted to the Billing Party for Billing Services.
- 20.5 Notwithstanding Section 20.3 above, the Parties acknowledge that SBC shall be responsible for the recording and/or transmission of Outcollect Messages provided to MCI under this Agreement and that MCI has no knowledge of the validity of said Outcollect Messages. The Parties further acknowledge that MCI strictly relies upon SBC to forward only correct and complete Outcollect Messages to MCI for billing and collection and/or rating and re-transmission to SBC for billing and collection. SBC agrees, when forwarding Outcollect Messages to MCI, to ensure that said Outcollect Messages are correct and accurately reflect proper data legally attributed to the Subscriber's use of the network. Such SBC assurance shall apply to all Outcollect Messages forwarded by SBC to MCI under this Agreement from whatever source. SBC agrees to defend, indemnify and hold harmless MCI for any loss, costs, claim, damage or expense (including reasonable attorneys' fees) arising from or relating to SBC's

recording and/or transmission of Outcollect Messages provided to MCI and MCI's strict reliance on such performance by SBC.

- 20.6 Each Party shall indemnify and hold harmless the other Party from any loss, damage, liability, or expense on account of any claim(s) based on any allegation that any products, materials, and/or services or any part thereof provided to the Indemnified Party infringe upon or violate any U.S. patents, U.S. copyrights, trade secrets, trademarks, service marks, or other proprietary right(s) of any third party. The Indemnifying Party shall defend such claim at its expense and shall pay any costs and damages (including reasonable attorneys' fees) that may be settled or awarded against the Indemnified Party provided that the Indemnified Party notifies the Indemnifying Party of the claim in writing within a reasonable time frame. Unless otherwise agreed upon by the Parties, the Indemnifying Party shall have sole control of the defense for any such claim and all settlement negotiations. The Indemnified Party shall provide the Indemnifying Party with the assistance, information, and authority necessary to perform the Indemnifying Party's obligations hereunder. The Indemnifying Party will reimburse reasonable out-of-pocket expenses incurred by the Indemnified Party in providing such assistance. The Indemnifying Party shall not be obligated to indemnify the Indemnified Party for any settlement made without the Indemnifying Party's consent.
- 20.7 If, as a result of a claim or action described in Section 20.6 above, services furnished under this Agreement are held to constitute an infringement and the use is restrained or enjoined, the Indemnifying Party shall, at its own expense, either: promptly take such action as is necessary to stay the effect of such injunction; or promptly (i) procure for the Indemnified Party the right to provide said service(s); (ii) modify said service to become non-infringing (provided that such modification does not affect the intended use of the service; or (iii) replace said service(s) with equally suitable, non-infringing service(s) at no additional charge to the Indemnified Party, consistent with the Indemnifying Party's obligations as set forth in this Agreement.

21.0 Requests for Changes to Services Provided

Requests by either Party for changes to existing services provided under this Agreement or requests for new services not covered by this Agreement shall be handled on an individual case basis with the prices, terms and conditions of the revised or new services to be separately negotiated.

22.0 Amendments and Waivers

This Agreement may be modified or additional provisions may be added by written agreement signed by or on behalf of both Parties. No amendment or waiver of any provision of this Agreement and no consent to any default under this Agreement shall be effective unless the same shall be in writing and signed by both Parties. In addition, no course of dealing or failure of any Party to strictly enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition.

23.0 Assignment

This Agreement shall not be assigned by either Party without the prior written consent of the other Party hereto, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, this Agreement may be assigned without consent to the successor of either Party, to an affiliate of such Party or to a person, firm or corporation acquiring all or a controlling interest in the business assets of such Party, upon sixty (60) days prior written notice. Such assignment without consent

shall not relieve the assigning Party of its obligations. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties. Any prohibited assignment shall be null and void.

24.0 Compliance with Law

- 24.1 During the term of this Agreement, each Party shall comply with all federal, state and local laws, statutes, regulations, and rules that are material to such Party's performance under this Agreement and shall maintain all licenses and permits required for its performance under this Agreement.
- 24.2 Each Party shall immediately notify the other Party in writing of the commencement of any action, suit or proceeding materially involving its ability to perform its obligations under this Agreement.
- 24.3 The Non-Billing Party agrees to respond with the Billing Party to any complaints or inquiries received by the Billing Party from any State or Federal, legal or regulatory body regarding Local Prison Pay Phone messages billed on behalf of the Non-Billing Party.
- 24.4 The Parties will make any and all necessary filings that may be required from time to time in connection with this transaction by any governmental body having jurisdiction.

25.0 Regulatory Compliance

The Parties shall use all reasonable efforts to protect its ability to offer the services provided under the terms and conditions of this Agreement. If any regulatory authority of competent jurisdiction should determine that any or all of the services offered pursuant to this Agreement should be regulated and/or tarified, any and all of the terms, conditions, rates and charges affected shall be superseded by said tariff and/or regulation.

26.0 Governing Law

This Agreement shall be governed by the local law of the State of Texas without regard to its conflict of law provisions, except insofar as federal law may control any aspect of this Agreement, in which case, federal law or regulation shall govern such aspect.

27.0 Force Majeure

- 27.1 Neither Party shall be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence. These causes may include acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, or other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of transportation common carriers.
- 27.2 If any force majeure condition occurs, the Party delayed or unable to perform shall give immediate notice of same to the other Party. During the pendency of the force majeure conditions, the duties of the Parties under this Agreement affected by said conditions shall be abated and shall resume without liability thereafter. Notwithstanding the above, in the event of a force majeure conditions, the Parties agree to provide the services in the

same manner and at a performance level no less than the services it performs on its own behalf and that provided to any other carriers.

28.0 Publicity

Except as otherwise provided in this Agreement, neither Party shall publish or use the other Party's name, language, pictures or symbols from which the other Party's name may be reasonably inferred or implied in any advertising, promotion or any publicity matter relating to services provided under this Agreement without the express written permission of the other Party.

29.0 Confidentiality

29.1 For the purposes of this Agreement, "Confidential Information" means confidential or proprietary Information given by one Party (the "Discloser") to the other Party (the "Recipient") that: 1) the Recipient either has reason to know based upon the facts surrounding the disclosure of the information and/or the nature of the information itself that the Discloser safeguards by exercising at least a reasonable standard of care to protect as confidential information, or that the Recipient is presumed to know that the Discloser believes is confidential because it falls within one or more types of information described herein. All information which is of the following types disclosed by one Party to the other in connection with this Agreement shall automatically be deemed Confidential Information subject to this Agreement. Confidential Information shall be of the following types: all information, including specifications, microfilm, photocopies, magnetic disks, magnetic tapes, audit information, models, system interfaces, forecasts, computer programs, software, documentation, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data shall be deemed "Confidential" if:

29.1.1 Furnished or made available or otherwise disclosed by the Discloser or its agent, employee, representative or Affiliate to the Recipient or its agent, employee, representative or Affiliate dealing with End User-specific, facility-specific, or usage-specific information, other than End User information communicated for the purpose of publication, directory, or other database inclusion, 911, call processing, or for such other purposes as mutually agreed upon; all orders for Network Elements, Ancillary Functions, Combinations, Local Services or other services placed by MCI or SBC pursuant to this Agreement, and information that would constitute Customer Proprietary Network Information of MCI or SBC customers pursuant to the Act and the rules and regulations of the FCC, and recorded usage data, whether disclosed by MCI to SBC or SBC to MCI or otherwise acquired by SBC or MCI in the course of the performance of this Agreement, shall be deemed Confidential Information of MCI or SBC, as the case may be, for all purposes under this Agreement.

29.2 For a period of ten (10) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees

- i. to use it only for the purpose of performing under this Agreement,
- ii. to hold it in confidence and disclose it to no one other than its employees, contractors, agents or Affiliates having a need to know for the purpose of performing under this Agreement, and
- iii. to safeguard it from unauthorized use or disclosure with at least the same degree of care with which the Recipient safeguards its own Confidential Information.

If the Recipient wishes to disclose the Discloser's Confidential Information to a third party consultant, such disclosure must be mutually agreed to in advance and in writing by the Parties to this Agreement, and the consultant must have executed a written agreement of non-disclosure and non-use comparable in scope to the terms of this Section.

29.3 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies shall bear the same copyright and Confidential rights notices as are contained on the original.

29.4 Return of Confidential Information

29.4.1 All Confidential Information shall remain the property of the Disclosing Party, and all documents or other tangible media delivered to the Receiving Party that conspicuously embody such Confidential Information shall be, at the option of the Disclosing Party, either promptly returned to Disclosing Party or destroyed, except as otherwise may be required from time to time by Applicable Law (in which case the use and disclosure of such Confidential Information will continue to be subject to this Agreement), upon the earlier of (i) the date on which the Receiving Party's need for it has expired and (ii) the expiration or termination of this Agreement.

29.5 Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Confidential Information that:

29.5.1 Was at the time of receipt, already known to the Receiving Party, free of any obligation to keep confidential and evidenced by written records prepared prior to delivery by the Disclosing Party; or

29.5.2 Is, or becomes publicly known through no wrongful act of the Receiving Party; or

29.5.3 Is rightfully received from a third party having no direct or indirect secrecy or confidentiality obligation to the Disclosing Party with respect to such information; provided that such Receiving Party has exercised commercially reasonable efforts to determine whether such third party has any such obligation; or

29.5.4 Is independently developed by an agent, employee, representative or Affiliate of the Receiving Party and such Party is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Confidential Information; or

29.5.5 Is disclosed to a third party by the Disclosing Party without similar restrictions on such third party's rights; or

29.5.6 Is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization granted; or

29.5.7 Is required to be made public by the Receiving Party pursuant to Applicable Law or regulation, provided that such production or disclosure shall have been made as provided herein.

29.6 Proposed Disclosure of Confidential Information to a Governmental Authority

- 29.6.1 If a Receiving Party desires to disclose or provide to the Commission, the FCC or any other governmental authority any Confidential Information of the Disclosing Party, such Receiving Party shall, prior to and as a condition of such disclosure, (i) provide the Disclosing Party with written notice and the form of such proposed disclosure as soon as possible but in any event early enough to allow the Disclosing Party to protect its interests in the Confidential Information to be disclosed and (ii) attempt to obtain in accordance with the applicable procedures of the intended recipient of such Confidential Information an appropriate order for protective relief or other reliable assurance that confidential treatment shall be accorded to such Confidential Information.
- 29.6.2 If a Receiving Party is required by any Governmental Authority or by Applicable Law to disclose any Confidential Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible, and in no event later than five (5) calendar days after receipt of such requirement, and prior to such disclosure. Upon receipt of written notice of the requirement to disclose Confidential Information, the Disclosing Party at its expense, may then either seek appropriate protective relief in advance of such requirement to prevent all or part of such disclosure or waive the Receiving Party's compliance with this Section 29 with respect to all or part of such requirement.
- 29.6.3 The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to seek pursuant to this Section 29. In the absence of such relief, if the Receiving Party is legally compelled to disclose any Confidential Information, then the Receiving Party shall exercise all commercially reasonable efforts to preserve the confidentiality of the Confidential information, including cooperating with the Disclosing Party, at the Disclosing Party's expense, to obtain an appropriate order for protective relief or other reliable assurance that confidential treatment will be accorded the Confidential Information.
- 29.7 Customer Proprietary Network Information ("CPNI")
- 29.7.1 CPNI related to MCI's subscribers obtained by virtue of Interconnection or any other service provided under this Agreement shall be MCI's proprietary information and may not be used by SBC for any purpose except performance of its obligations under this Agreement or as otherwise permitted by law, and in connection with such performance, shall be disclosed only to SBC's employees, contractors, agents or Affiliates with a need to know, unless the MCI Subscriber expressly directs MCI to disclose, or approves the disclosure of, such information to SBC pursuant to the requirements of Section 222(c)(1) or (2) of the Act. If SBC seeks and obtains approval to use or disclose such CPNI from MCI's Subscribers, such approval shall be obtained only in compliance with Section 222(c)(1) or (2) and, in the event such authorization is obtained, SBC may use or disclose only such information as MCI provides pursuant to such authorization and may not use information that SBC has otherwise obtained, directly or indirectly, in connection with its performance under this Agreement except as permitted by law. CPNI related to SBC's Subscribers obtained by virtue of Interconnection or any other service provided under this Agreement shall be SBC's proprietary information and may not be used by MCI for any purpose except performance of its obligations under this Agreement or as otherwise permitted by law, and in connection with such performance shall be disclosed only to MCI's employees, contractors, agents or affiliates with a need to know, unless the SBC Subscriber expressly directs SBC to disclose, or

approves the disclosure of, such information to MCI pursuant to the requirements of Section 222(c)(1) or (2). If MCI seeks and obtains approval to use or disclose such CPNI from SBC's Subscribers, such approval shall be obtained only in compliance with Section 222(c)(1) or (2) and, in the event such authorization is obtained, MCI may use or disclose only such information as SBC provides pursuant to such authorization and may not use information that MCI has otherwise obtained, directly or indirectly, in connection with its performance under this Agreement except as permitted by law.

29.8 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement shall survive such expiration or termination. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement. Notwithstanding the immediately preceding sentence, neither Party's obligations under such sentence shall exceed those required by law, regulation or regulatory or judicial decision.

- i. Any intellectual property, which originates from or is developed by a Party, shall remain in the exclusive ownership of that Party.
- ii. Except as provided hereunder, or as otherwise expressly provided elsewhere in this Agreement, no license is hereby granted under any patent, trademark, or copyright, nor is any such license implied, solely by virtue of the disclosure of any Confidential Information. This provision shall not require either Party to grant a license in violation of any law. Nothing in this paragraph shall relieve the Parties of their obligations and responsibilities set forth in herein.

29.9 The Parties agree that an impending or existing violation of any provision of this Section 29 would cause the Disclosing Party irreparable injury for which it would have no adequate remedy at law, and agree that Disclosing Party shall be entitled to obtain immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it at law or in equity, including both specific performance and monetary damages.

30.0 Survival

Provisions contained in this Agreement that by their sense and context are intended to survive the expiration or termination of this Agreement shall so survive. Without limiting the general applicability of the foregoing, the following terms and conditions of the Agreement are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Indemnification, Confidentiality, Limitation of Liability, and any liability or obligations of a Party for acts or omissions prior to the expiration or termination of this Agreement.

31.0 Entire Agreement

31.1 This Agreement, including all Exhibits and subordinate documents attached to or incorporated herein by reference, together constitute the entire Agreement between the Parties, and supersede all prior oral or written agreements, representations, statements, negotiations, understanding, proposals, and undertakings with respect to the subject matter hereof.

31.2 To the extent that the provisions of this Agreement and the Exhibits incorporated herein are inconsistent or are in conflict with the provisions of interconnection agreements or any supplemental and/or subordinate documents incorporated herein by reference, e.g. the Daily Usage Extract user guide, the provisions of this Principal Agreement shall control. To the extent the provisions of the Principal Agreement and the Exhibits incorporated herein are inconsistent or are in conflict the Exhibits shall control.

32.0 Severability

If any part of this Agreement is held to be invalid for any reason, such invalidity will affect only the portion of this Agreement that is invalid. In all other respects, this Agreement will stand as if the invalid provision had not been a part of it, and the remainder of this Agreement will remain in full force and effect.

33.0 Headings Not Controlling

The headings and numbering of Sections, Parts and Exhibits in this Agreement are for convenience only and will not be construed to define or limit any of the terms in this Agreement or affect the meaning or interpretation of this Agreement.

34.0 Third Party Beneficiaries

No person or entity not a Party hereto shall have any interest herein or be deemed a third party beneficiary hereof. This Agreement shall not provide any person or entity not a Party to this Agreement with any remedy, claim, liability, reimbursement, cause of action or other right in addition to those existing without reference to this Agreement.

35.0 Remedies Cumulative

All remedies are cumulative and are not exclusive of other remedies to which an injured Party may be entitled at law or equity.

36.0 Executed in Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same document.

37.0 Relationship Of The Parties/Independent Contractor, No Interest Created

37.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party and each Party's contractor(s) shall be solely responsible for all matters relating to payment of such employees, including the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts and all other regulations governing such matters. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.

- 37.2 Nothing contained herein shall constitute the Parties as joint ventures, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.
- 37.3 Nothing in this Agreement shall be deemed to create any interest in favor of SBC or MCI in the assets, revenues, earnings or otherwise in the business of the other.

38.0 Subcontracting

- 38.1 If either Party retains or engages any subcontractor to perform any of that Party's obligations under this Agreement, each Party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either Party performs through subcontractors.
- 38.2 Each Party will be solely responsible for payments due that Party's subcontractors.
- 38.3 No subcontractor will be deemed a third party beneficiary for any purposes under this Agreement.
- 38.4 No contract, subcontract or other agreement entered into by or between either Party with any third party in connection with the provision of interconnection, resale services, network elements, functions, facilities, products and services hereunder will provide for any indemnity, guarantee or assumption of liability by the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party.
- 38.5 Any subcontractor that gains access to CPNI or Proprietary Information covered by this Agreement shall be required by the subcontracting Party to protect such CPNI or Proprietary Information to the same extent the subcontracting Party is required to protect such CPNI or Proprietary Information under the terms of this Agreement and Exhibits attached hereto.

39.0 Realignment Of Local Exchange Telephone Franchises

- 39.1 In the event SBC sells, exchanges, or transfers a SBC local exchange telephone franchise(s) in which SBC provides services under this Agreement, SBC agrees to the following:
- 39.2 To notify the MCI of the sale, exchange, or transfer of a SBC local exchange franchise and the proposed closing date, provided information regarding the sale, exchange, or transfer is not confidential or prohibited by law, regulation, court or regulatory order, or agreement from being disclosed to third parties. If information regarding the sale, exchange, or transfer is confidential, SBC will notify MCI at the earliest reasonable opportunity when such information is no longer confidential and such disclosure is not

prohibited by law, regulation, court or regulatory order, or agreement from being disclosed to third parties.

- 39.3 Neither Party shall have an obligation to perform ABS Message billing in local exchange telephone franchises that have been sold, exchanged, or transferred to another party by SBC.
- 39.4 Subject to the terms of the sale, exchange, or transfer, SBC shall cooperate with MCI on billing and interface issues related to the sale, exchange, or transfer of SBC local exchange telephone franchise(s) as to Services performed under this Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above

The SBC Incumbent Local Exchange Carriers :

Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, d/b/a SBC Kansas, d/b/a SBC Missouri, d/b/a SBC Oklahoma and d/b/a SBC Texas, Pacific Bell Telephone Company, d/b/a SBC California, Nevada Bell Telephone Company, d/b/a SBC Nevada, Southern New England Telephone Company, d/b/a SBC Connecticut, Illinois Bell Telephone Company, d/b/a SBC Illinois, Indiana Bell Telephone Company, d/b/a SBC Indiana, Michigan Bell Telephone Company, d/b/a SBC Michigan, The Ohio Bell Telephone Company, d/b/a SBC Ohio, Wisconsin Bell, Inc., d/b/a SBC Wisconsin, by SBC Telecommunications, Inc., Its Authorized Agent.

The MCI Competitive Local Exchange Carriers:

Brooks Fiber Communications of Arkansas, Inc., Brooks Fiber Communications of Bakersfield, Inc., Brooks Fiber Communications of Connecticut, Inc., Brooks Fiber Communications of Fresno, Inc., Brooks Fiber Communications of Michigan, Inc., Brooks Fiber Communications of Missouri, Inc., Brooks Fiber Communications of Nevada, Inc., Brooks Fiber Communications of Ohio, Inc., Brooks Fiber Communications of Oklahoma, Inc., Brooks Fiber Communications of Sacramento, Inc., Brooks Fiber Communications of San Jose, Inc., Brooks Fiber Communications of Stockton, Inc., Brooks Fiber Communications of Texas, Inc., Brooks Fiber Communications of Tulsa, Inc., Intermedia Communications, Inc.; MCImetro Access Transmission Services LLC, and MCI WORLDCOM Communications, Inc. f/k/a MFS Communications Company, Inc. or MFS Intelenet of Connecticut, Inc. or WorldCom Technologies, Inc. or MCI WorldCom Technologies, Inc., which are a Certified Local Exchange Carrier

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

Exhibit A

Rate Schedule

Message processing: Per ABS message	\$ 0.05
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